

**Status of Company-Owned Outlets**  
For years 2004 to 2006

Column 1 State	Column 2 Year	Column 3 Outlets at Start of Year	Column 4 Outlets Opened	Column 5 Outlets Reac- quired From Franchisees	Column 6 Outlets Closed	Column 7 Outlets Sold to Franchisees	Column 8 Outlets at End of the Year
	2005	7	2	0	3	0	6
	2006	6	0	0	3	1	2

APPENDIX F TO PART 436—SAMPLE ITEM  
20(5) TABLE—PROJECTED NEW FRAN-  
CHISED OUTLETS

**Projected New Franchised Outlets**  
As of December 31, 2006

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlets in the Next Fiscal Year	Column 4 Projected New Company- Owned Outlets in the Current Fiscal Year
CO	2	3	1
NM	0	4	2
Total	2	7	3

**PART 437—DISCLOSURE REQUIRE-  
MENTS AND PROHIBITIONS CON-  
CERNING BUSINESS OPPORTUNI-  
TIES**

Sec.

437.1 The Rule.

437.2 Definitions.

437.3 Severability.

AUTHORITY: 15 U.S.C. 41-58.

SOURCE: 72 FR 15563, Mar. 30, 2007, unless otherwise note.

**§ 437.1 The Rule.**

In connection with the advertising, offering, licensing, contracting, sale, or other promotion in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, of any business opportunity, or any relationship which is represented either orally or in writing to be a business opportunity, it is an unfair or deceptive act or practice within the meaning of Section 5 of that Act for any business opportunity seller or business opportunity broker:

(a) To fail to furnish any prospective business opportunity purchaser with the following information accurately, clearly, and concisely stated, in a leg-

ible, written document at the earlier of the “time for making of disclosures” or the first “personal meeting”:

(1)(i) The official name and address and principal place of business of the business opportunity seller, and of the parent firm or holding company of the business opportunity seller, if any;

(ii) The name under which the business opportunity seller is doing or intends to do business; and

(iii) The trademarks, trade names, service marks, advertising or other commercial symbols (hereinafter collectively referred to as “marks”) which identify the goods, commodities, or services to be offered, sold, or distributed by the prospective business opportunity purchaser, or under which the prospective business opportunity purchaser will be operating.

(2) The business experience during the past 5 years, stated individually, of each of the business opportunity seller’s current directors and executive officers (including, and hereinafter to include, the chief executive and chief operating officer, financial, business opportunity marketing, training and service officers). With regard to each person listed, those persons’ principal

## Federal Trade Commission

## § 437.1

occupations and employers must be included.

(3) The business experience of the business opportunity seller and the business opportunity seller's parent firm (if any), including the length of time each:

(i) Has conducted a business of the type to be operated by the business opportunity purchaser;

(ii) Has offered or sold a business opportunity for such business;

(iii) Has conducted a business or offered or sold a business opportunity for a business

(A) Operating under a name using any mark set forth under paragraph (a)(1)(iii) of this section, or

(B) Involving the sale, offering, or distribution of goods, commodities, or services which are identified by any mark set forth under paragraph (a)(1)(iii) of this section; and

(iv) Has offered for sale or sold business opportunities in other lines of business, together with a description of such other lines of business.

(4) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (3) of this section:

(i) Has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(ii) Has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action

(A) Involving allegations of fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or

(B) Which was brought by a present or former business opportunity purchaser or business opportunity purchasers and which involves or involved the business opportunity relationship; *Provided, however*, That only material individual civil actions need be so list-

ed pursuant to this paragraph (4)(ii) of this section, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material;

(iii) Is subject to any currently effective State or Federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunity activities or the business opportunity seller-purchaser relationship, or involving fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(5) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (3) of this section at any time during the previous 7 fiscal years has:

(i) Filed in bankruptcy;

(ii) Been adjudged bankrupt;

(iii) Been reorganized due to insolvency; or

(iv) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within 1 year after the period that such person held such position in such other person. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto, shall be set forth.

(6) A factual description of the business opportunity offered to be sold by the business opportunity seller.

(7) A statement of the total funds which must be paid by the business opportunity purchaser to the business opportunity seller or to a person affiliated with the business opportunity

seller, or which the business opportunity seller or such affiliated person imposes or collects in whole or in part on behalf of a third party, in order to obtain or commence the business opportunity operation, such as initial business opportunity fees, deposits, down payments, prepaid rent, and equipment and inventory purchases. If all or part of these fees or deposits are returnable under certain conditions, these conditions shall be set forth; and if not returnable, such fact shall be disclosed.

(8) A statement describing any recurring funds required to be paid, in connection with carrying on the business opportunity business, by the business opportunity purchaser to the business opportunity seller or to a person affiliated with the business opportunity seller, or which the business opportunity seller or such affiliated person imposes or collects in whole or in part on behalf of a third party, including, but not limited to, royalty, lease, advertising, training, and sign rental fees, and equipment or inventory purchases.

(9) A statement setting forth the name of each person (including the business opportunity seller) the business opportunity purchaser is directly or indirectly required or advised to do business with by the business opportunity seller, where such persons are affiliated with the business opportunity seller.

(10) A statement describing any real estate, services, supplies, products, inventories, signs, fixtures, or equipment relating to the establishment or the operation of the business opportunity business which the business opportunity purchaser is directly or indirectly required by the business opportunity seller to purchase, lease or rent; and if such purchases, leases or rentals must be made from specific persons (including the business opportunity seller), a list of the names and addresses of each such person. Such list may be made in a separate document delivered to the prospective business opportunity purchaser with the prospectus if the existence of such separate document is disclosed in the prospectus.

(11) A description of the basis for calculating, and, if such information is

readily available, the actual amount of, any revenue or other consideration to be received by the business opportunity seller or persons affiliated with the business opportunity seller from suppliers to the prospective business opportunity purchaser in consideration for goods or services which the business opportunity seller requires or advises the business opportunity purchaser to obtain from such suppliers.

(12)(i) A statement of all the material terms and conditions of any financing arrangement offered directly or indirectly by the business opportunity seller, or any person affiliated with the business opportunity seller, to the prospective business opportunity purchaser; and

(ii) A description of the terms by which any payment is to be received by the business opportunity seller from

(A) Any person offering financing to a prospective business opportunity purchaser; and

(B) Any person arranging for financing for a prospective business opportunity purchaser.

(13) A statement describing the material facts of whether, by the terms of the business opportunity agreement or other device or practice, the business opportunity purchaser is:

(i) Limited in the goods or services he or she may offer for sale;

(ii) Limited in the customers to whom he or she may sell such goods or services;

(iii) Limited in the geographic area in which he or she may offer for sale or sell goods or services; or

(iv) Granted territorial protection by the business opportunity seller, by which, with respect to a territory or area,

(A) The business opportunity seller will not establish another, or more than any fixed number of, business opportunities or company-owned outlets, either operating under, or selling, offering, or distributing goods, commodities or services, identified by any mark set forth under paragraph (a)(1)(iii) of this section; or

(B) The business opportunity seller or its parent will not establish other business opportunities or company-owned outlets selling or leasing the same or similar products or services

under a different trade name, trademark, service mark, advertising or other commercial symbol.

(14) A statement of the extent to which the business opportunity seller requires the business opportunity purchaser (or, if the business opportunity purchaser is a corporation, any person affiliated with the business opportunity purchaser) to participate personally in the direct operation of the business opportunity.

(15) A statement disclosing, with respect to the business opportunity agreement and any related agreements:

(i) The term (i.e., duration of arrangement), if any, of such agreement, and whether such term is or may be affected by any agreement (including leases or subleases) other than the one from which such term arises;

(ii) The conditions under which the business opportunity purchaser may renew or extend;

(iii) The conditions under which the business opportunity seller may refuse to renew or extend;

(iv) The conditions under which the business opportunity purchaser may terminate;

(v) The conditions under which the business opportunity seller may terminate;

(vi) the obligations (including lease or sublease obligations) of the business opportunity purchaser after termination of the business opportunity by the business opportunity seller, and the obligations of the business opportunity purchaser (including lease or sublease obligations) after termination of the business opportunity by the business opportunity purchaser and after the expiration of the business opportunity;

(vii) The business opportunity purchaser's interest upon termination of the business opportunity, or upon refusal to renew or extend the business opportunity, whether by the business opportunity seller or by the business opportunity purchaser;

(viii) The conditions under which the business opportunity seller may repurchase, whether by right of first refusal or at the option of the business opportunity seller (and if the business opportunity seller has the option to repurchase the business opportunity, wheth-

er there will be an independent appraisal of the business opportunity, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the business opportunity purchaser);

(ix) The conditions under which the business opportunity purchaser may sell or assign all or any interest in the ownership of the business opportunity, or of the assets of the business opportunity business;

(x) The conditions under which the business opportunity seller may sell or assign, in whole or in part, its interest under such agreements;

(xi) The conditions under which the business opportunity purchaser may modify;

(xii) The conditions under which the business opportunity seller may modify;

(xiii) The rights of the business opportunity purchaser's heirs or personal representative upon the death or incapacity of the business opportunity purchaser; and

(xiv) The provisions of any covenant not to compete.

(16) A statement disclosing, with respect to the business opportunity seller and as to the particular named business being offered:

(i) The total number of business opportunity purchasers operating at the end of the preceding fiscal year;

(ii) The total number of company-owned outlets operating at the end of the preceding fiscal year;

(iii) The names, addresses, and telephone numbers of

(A) The 10 business opportunity outlets of the named business opportunity business nearest the prospective business opportunity purchaser's intended location; or

(B) All business opportunity purchasers of the business opportunity seller; or

(C) All business opportunity purchasers of the business opportunity seller in the State in which the prospective business opportunity purchaser lives or where the proposed business opportunity is to be located, *Provided, however*, That there are more

than 10 such business opportunity purchasers. If the number of business opportunity purchasers to be disclosed pursuant to paragraph (a)(16)(iii)(B) or (C) of this section exceeds 50, such listing may be made in a separate document delivered to the prospective business opportunity purchaser with the prospectus if the existence of such separate document is disclosed in the prospectus;

(iv) The number of business opportunities voluntarily terminated or not renewed by business opportunity purchasers within, or at the conclusion of, the term of the business opportunity agreement, during the preceding fiscal year;

(v) The number of business opportunities reacquired by purchase by the business opportunity seller during the term of the business opportunity agreement, and upon the conclusion of the term of the business opportunity agreement, during the preceding fiscal year;

(vi) The number of business opportunities otherwise reacquired by the business opportunity seller during the term of the business opportunity agreement, and upon the conclusion of the term of the business opportunity agreement, during the preceding fiscal year;

(vii) The number of business opportunities for which the business opportunity seller refused renewal of the business opportunity agreement or other agreements relating to the business opportunity during the preceding fiscal year; and

(viii) The number of business opportunities that were canceled or terminated by the business opportunity seller during the term of the business opportunity agreement, and upon conclusion of the term of the business opportunity agreement, during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(16) (v), (vi), (vii), and (viii) of this section, the disclosure statement shall also include a general categorization of the reasons for such reacquisitions, refusals to renew or terminations, and the number falling within each such category, including but not limited to the following: failure to comply with quality control standards, failure to make suf-

ficient sales, and other breaches of contract.

(17)(i) If site selection or approval thereof by the business opportunity seller is involved in the business opportunity relationship, a statement disclosing the range of time that has elapsed between signing of business opportunity agreements or other agreements relating to the business opportunity and site selection, for agreements entered into during the preceding fiscal year; and

(ii) If operating business opportunity outlets are to be provided by the business opportunity seller, a statement disclosing the range of time that has elapsed between the signing of business opportunity agreements or other agreements relating to the business opportunity and the commencement of the business opportunity purchaser's business, for agreements entered into during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(17) (i) and (ii) of this section, a business opportunity seller may at its option also provide a distribution chart using meaningful classifications with respect to such ranges of time.

(18) If the business opportunity seller offers an initial training program or informs the prospective business opportunity purchaser that it intends to provide such person with initial training, a statement disclosing:

(i) The type and nature of such training;

(ii) The minimum amount, if any, of training that will be provided to a business opportunity purchaser; and

(iii) The cost, if any, to be borne by the business opportunity purchaser for the training to be provided, or for obtaining such training.

(19) If the name of a public figure is used in connection with a recommendation to purchase a business opportunity, or as a part of the name of the business opportunity operation, or if the public figure is stated to be involved with the management of the business opportunity seller, a statement disclosing:

(i) The nature and extent of the public figure's involvement and obligations to the business opportunity seller, including but not limited to the

promotional assistance the public figure will provide to the business opportunity seller and to the business opportunity purchaser;

(ii) The total investment of the public figure in the business opportunity operation; and

(iii) The amount of any fee or fees the business opportunity purchaser will be obligated to pay for such involvement or assistance provided by the public figure.

(20)(i) A balance sheet (statement of financial position) for the business opportunity seller for the most recent fiscal year, and an income statement (statement of results of operations) and statement of changes in financial position for the franchisor for the most recent three fiscal years. Such statements are required to have been examined in accordance with generally accepted auditing standards by an independent certified or licensed public accountant.

*Provided, however,* That where a business opportunity seller is a subsidiary of another corporation which is permitted under generally accepted accounting principles to prepare financial statements on a consolidated or combined statement basis, the above information may be submitted for the parent if (A) the corresponding unaudited financial statements of the business opportunity seller are also provided, and (B) the parent absolutely and irrevocably has agreed to guarantee all obligations of the subsidiary;

(ii) Unaudited statements shall be used only to the extent that audited statements have not been made, and provided that such statements are accompanied by a clear and conspicuous disclosure that they are unaudited. Statements shall be prepared on an audited basis as soon as practicable, but, at a minimum, financial statements for the first full fiscal year following the date on which the business opportunity seller must first comply with this part shall contain a balance sheet opinion prepared by an independent certified or licensed public accountant, and financial statements for the following fiscal year shall be fully audited.

(21) All of the foregoing information in paragraphs (a)(1) through (20) of this

section shall be contained in a single disclosure statement or prospectus, which shall not contain any materials or information other than that required by this part or by State law not preempted by this part. This does not preclude business opportunity sellers or brokers from giving other nondeceptive information orally, visually, or in separate literature so long as such information is not contradictory to the information in the disclosure statement required by paragraph (a) of this section. This disclosure statement shall carry a cover sheet distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the disclosure statement, and the following notice imprinted thereon in upper and lower case bold-face type of not less than 12 point size:

INFORMATION FOR PROSPECTIVE BUSINESS OPPORTUNITY PURCHASERS REQUIRED BY FEDERAL TRADE COMMISSION

\* \* \* \* \*

To protect you, we've required your business opportunity seller to give you this information. We haven't checked it, and don't know if it's correct. It should help you make up your mind. Study it carefully. While it includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Buying a business opportunity is a complicated investment. Take your time to decide. If possible, show your contract and this information to an advisor, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, you should let us know about it. It may be against the law.

There may also be laws on business opportunities in your state. Ask your state agencies about them.

Federal Trade Commission,  
Washington, D.C.

*Provided,* That the obligations to furnish such disclosure statement shall be deemed to have been met for both the business opportunity seller and the business opportunity broker if either such party furnishes the prospective business opportunity purchaser with such disclosure statement.

(22) All information contained in the disclosure statement shall be current

as of the close of the business opportunity seller's most recent fiscal year. After the close of each fiscal year, the business opportunity seller shall be given a period not exceeding 90 days to prepare a revised disclosure statement and, following such 90 days, may distribute only the revised prospectus and no other. The business opportunity seller shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure statement to reflect any material change in the business opportunity seller or relating to the business opportunity business of the business opportunity seller, about which the business opportunity seller or broker, or any agent, representative, or employee thereof, knows or should know. Each prospective business opportunity purchaser shall have in his or her possession at the "time for making of disclosures," the disclosure statement and quarterly revision for the period most recent to the "time for making of disclosures" and available at that time. Information which is required to be audited pursuant to paragraph (a)(20) of this section is not required to be audited for quarterly revisions. *Provided, however,* That the unaudited information is accompanied by a statement in immediate conjunction therewith that clearly and conspicuously discloses that such information has not been audited.

(23) A table of contents shall be included within the disclosure statement.

(24) The disclosure statement shall include a comment which either positively or negatively responds to each disclosure item required to be in the disclosure statement, by use of a statement which fully incorporates the information required by the item. Each disclosure item therein must be preceded by the appropriate heading, as set forth in Note 3 of this part.

(b) To make any oral, written, or visual representation to a prospective business opportunity purchaser which states a specific level of potential sales, income, gross or net profit for that prospective business opportunity purchaser, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the business opportunity is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective business opportunity purchaser and to the Commission or its staff upon reasonable demand.

*Provided, further,* That in immediate conjunction with such representation, the business opportunity seller shall disclose in a clear and conspicuous manner that such material is available to the prospective business opportunity purchaser; and *Provided, however,* That no provision within paragraph (b) of this section shall be construed as requiring the disclosure to any prospective business opportunity purchaser of the identity of any specific business opportunity purchaser or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further,* That no additional representation as to a prospective business opportunity purchaser's potential sales, income, or profits may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document whose text accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective business opportunity purchaser to whom the representation is made shall be furnished with such document no later than the "time for making of disclosure"; *Provided, however,* That if the representation is made at or prior to a "personal meeting" and such meeting occurs before the "time for making of disclosures", the document shall be furnished to the prospective business opportunity purchaser to whom the representation is made at that "personal meeting";

(4) The following statement is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation and in not less than twelve point upper and lower-case boldface type:

CAUTION

These figures are only estimates of what we think you may earn. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(5) The following information is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation:

(i) The number and percentage of outlets of the named business opportunity business which are located in the geographic markets that form the basis for any such representation and which are known to the business opportunity seller or broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (b)(5)(i) of this section, *Provided, however*, That any business opportunity seller without prior business opportunity experience as to the named business opportunity business so indicate such lack of experience in the document described in paragraph (b)(3) of this section.

*Except*, That representations of the sales, income or profits of existing business opportunity outlets need not comply with paragraph (b) of this section.

(c) To make any oral, written, or visual representation to a prospective business opportunity purchaser which states a specific level of sales, income, gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant

to the geographic market in which the business opportunity is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective business opportunity purchaser and to the Commission or its staff upon reasonable demand, *Provided, however*, That in immediate conjunction with such representation, the business opportunity purchaser discloses in a clear and conspicuous manner that such material is available to the prospective franchisee; and *Provided, further*, That no provision within paragraph (c) of this section shall be construed as requiring the disclosure to any prospective business opportunity purchaser of the identity of any specific business opportunity purchaser or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further*, That no additional representation as to the sales, income, or gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document which accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective business opportunity purchaser to whom the representation is made shall be furnished with such document no later than the "time for making of disclosures," *Provided, however*, That if the representation is made at or prior to a "personal meeting" and such meeting occurs before the "time for making of disclosures," the document shall be furnished to the prospective business opportunity purchaser to whom the representation is made at that "personal meeting";



(4) The underlying data on which the representation is based have been prepared in accordance with generally accepted accounting principles;

(5) The following statement is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation, and in not less than twelve point upper and lower case boldface type:

**CAUTION**

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(6) The following information is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation:

(i) the number and percentage of outlets of the named business opportunity business which are located in the geographic markets that form the basis for any such representation and which are known to the business opportunity seller or broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (c)(6)(i) of this section, *Provided, however*, That any business opportunity seller without prior business opportunity experience as to the named business opportunity business so indicate such lack of experience in the document described in paragraph (c)(3) of this section.

(d) To fail to provide the following information within the document(s) required by paragraphs (b)(3) and (c)(3) of this section whenever any representation is made to a prospective business opportunity purchaser regarding its potential sales, income, or profits, or the sales, income, gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business:

(1) A cover sheet distinctively and conspicuously showing the name of the business opportunity seller, the date of

issuance of the document and the following notice imprinted thereon in upper and lower case boldface type of not less than twelve point size:

INFORMATION FOR PROSPECTIVE BUSINESS OPPORTUNITY PURCHASERS ABOUT BUSINESS OPPORTUNITY [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION.

To protect you, we're required the business opportunity seller to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. Then take your time and think it over.

If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law.

There may also be laws on business opportunities in your State. Ask your State agencies about them.

Federal Trade Commission,  
Washington, D.C.

(2) A table of contents. *Provided, however*, That each prospective business opportunity purchaser to whom the representation is made shall be notified at the "time for making of disclosures" of any material change (about which the business opportunity seller, broker, or any of the agents, representations, or employees thereof, knows or should know) in the information contained in the document(s) described by paragraphs (b)(3) and (c)(3) of this section.

(e) To make any oral, written, or visual representation for general dissemination (not otherwise covered by paragraph (b) or (c) of this section) which states a specific level of sales, income, gross or net profits, either actual or potential, of existing or prospective outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation and which is made available to the Commission or its staff upon reasonable demand;

(2) The underlying data on which each representation of sales, income or profit for existing outlets is based have been prepared in accordance with generally accepted accounting principles;

(3) In immediate conjunction with such representation, there shall be clearly and conspicuously disclosed the number and percentage of outlets of the named business opportunity business which the business opportunity seller or broker knows to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(4) In immediate conjunction with each such representation of potential sales, income or profits, the following statement shall be clearly and conspicuously disclosed:

CAUTION

These figures are only estimates; there is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

*Provided, however,* That if such representation is not based on actual experience of existing outlets of the named business opportunity business, that fact also should be disclosed;

(5) No later than the earlier of the first "personal meeting" or the "time for making of disclosures," each prospective business opportunity purchaser shall be given a single, legible written document which accurately, clearly and concisely sets forth the following information and materials (and none other than that provided for by this part or by State law not preempted by this part):

(i) The representation, set forth in detail along with the material bases and assumptions therefor;

(ii) the number and percentage of outlets of the named business opportunity business which the business opportunity seller or broker knows to have earned or made at least the same sales, income or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(iii) With respect to each such representation of sales, income, or profits of existing outlets, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(iv) With respect to each such representation of potential sales, income, or profits, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

These figures are only estimates. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(v) If applicable, a statement clearly and conspicuously disclosing that the business opportunity seller lacks prior business opportunity experience as to the named business opportunity business;

(vi) If applicable, a statement clearly and conspicuously disclosing that the business opportunity seller has not been in business long enough to have actual business data;

(vii) A cover sheet, distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the document, and the following notice printed thereon in not less than 12 point upper and lower case boldface type:

INFORMATION FOR PROSPECTIVE BUSINESS OPPORTUNITY PURCHASERS ABOUT BUSINESS OPPORTUNITY [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION

To protect you, we've required the business opportunity seller to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law. There may also be laws

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about business opportunities in your State. Ask your State agencies about them.

Federal Trade Commission,  
Washington, D.C.

(viii) A table of contents;

(6) Each prospective business opportunity purchaser shall be notified at the “time for making of disclosures” of any material changes that have occurred in the information contained in this document.

(f) To make any claim or representation which is contradictory to the information required to be disclosed by this part.

(g) To fail to furnish the prospective business opportunity purchaser with a copy of the business opportunity seller’s business opportunity agreement and related agreements with the document, and a copy of the completed business opportunity and related agreements intended to be executed by the parties at least 5 business days prior to the date the agreements are to be executed.

*Provided, however,* That the obligations defined in paragraphs (b) through (g) of this section shall be deemed to have been met for both the business opportunity seller and the broker if either such person furnishes the prospective business opportunity purchaser with the written disclosures required thereby.

(h) To fail to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.

### § 437.2 Definitions.

As used in this part, the following definitions shall apply:

(a) The term *business opportunity* means any continuing commercial relationship created by any arrangement or arrangements whereby:

(1) A person (hereinafter “business opportunity purchaser”) offers, sells, or distributes to any person other than a “business opportunity seller” (as hereinafter defined), goods, commodities, or services which are:

(i)(A) Supplied by another person (hereinafter “business opportunity seller”); or

(B) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indi-

rectly required to do business by another person (hereinafter “business opportunity seller”); or

(C) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indirectly advised to do business by another person (hereinafter “business opportunity seller”) where such third person is affiliated with the business opportunity seller; and

(ii) The business opportunity seller:

(A) Secures for the business opportunity purchaser retail outlets or accounts for said goods, commodities, or services; or

(B) Secures for the business opportunity purchaser locations or sites for vending machines, rack displays, or any other product sales displays used by the business opportunity purchaser in the offering, sale, or distribution of said goods, commodities, or services; or

(C) Provides to the business opportunity purchaser the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraphs (a)(ii)(A) and (B) of this section; and

(2) The business opportunity purchaser is required as a condition of obtaining or commencing the business opportunity operation to make a payment or a commitment to pay to the business opportunity seller, or to a person affiliated with the business opportunity seller.

(3) Exemptions. The provisions of this part shall not apply to a business opportunity:

(i) Which is a “fractional business opportunity”; or

(ii) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor’s own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly

(A) Required to do business with by the retailer-grantor or

(B) Advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor; or

(iii) Where the total of the payments referred to in paragraph (a)(2) of this section made during a period from any time before to within 6 months after commencing operation of the business opportunity purchaser's business, is less than \$500; or

(iv) Where there is no writing which evidences any material term or aspect of the relationship or arrangement; or

(v) Which complies with the franchise disclosure requirements set forth at part 436 or falls under one or more of the exemptions set forth at § 436.8 of part 436.

(4) Exclusions. The term "business opportunity" shall not be deemed to include any continuing commercial relationship created solely by:

(i) The relationship between an employer and an employee, or among general business partners; or

(ii) Membership in a bona fide "cooperative association"; or

(iii) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services; or

(iv) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

(4) Any relationship which is represented either orally or in writing to be a business opportunity (as defined in paragraph (a) of this section) is subject to the requirements of this part.

(b) The term *person* means any individual, group, association, limited or general partnership, corporation, or any other business entity.

(c) The term *business opportunity seller* means any person who participates in a business opportunity relationship as a business opportunity seller, as denoted in paragraph (a) of this section.

(d) The term *business opportunity purchaser* means any person

(1) Who participates in a business opportunity relationship as a business opportunity purchaser, as denoted in paragraph (a) of this section, or

(2) To whom an interest in a business opportunity is sold.

(e) The term *prospective business opportunity purchaser* includes any person, including any representative, agent, or employee of that person, who approaches or is approached by a business opportunity seller or broker, or any representative, agent, or employee thereof, for the purpose of discussing the establishment, or possible establishment, of a business opportunity relationship involving such a person.

(f) The term *business day* means any day other than Saturday, Sunday, or the following national holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

(g) The term *time for making of disclosures* means ten (10) business days prior to the earlier of

(1) The execution by a prospective business opportunity purchaser of any business opportunity agreement or any other agreement imposing a binding legal obligation on such prospective business opportunity purchaser, about which the business opportunity seller, broker, or any agent, representative, or employee thereof, knows or should know, in connection with the sale or proposed sale of a business opportunity, or

(2) The payment by a prospective business opportunity purchaser, about which the business opportunity seller, broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a business opportunity.

(h) The term *fractional business opportunity* means any relationship, as denoted by paragraph (a) of this section, in which the person described therein as a business opportunity purchaser, or any of the current directors or executive officers thereof, has been in the type of business represented by the business opportunity relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing

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the business opportunity relationship was reached, that the sales arising from the relationship would represent no more than 20 percent of the sales in dollar volume of the business opportunity purchaser.

(i) The term *affiliated person* means a person (as defined in paragraph (b) of this section):

(1) Which directly or indirectly controls, is controlled by, or is under common control with, a business opportunity seller; or

(2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a business opportunity seller; or

(3) Which has, in common with a business opportunity seller, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

(j) The term *business opportunity broker* means any person other than a business opportunity seller or a business opportunity purchaser who sells, offers for sale, or arranges for the sale of a business opportunity.

(k) The term *sale of a business opportunity* includes a contract or agreement whereby a person obtains a business opportunity or an interest in a business opportunity for value by purchase, license, or otherwise. This term shall not be deemed to include the renewal or extension of an existing business opportunity where there is no interruption in the operation of the business opportunity business by the business opportunity purchaser, unless the new contracts or agreements contain material changes from those in effect between the business opportunity seller and business opportunity purchaser prior thereto.

(l) A *cooperative association* is either

(1) An association of producers of agricultural products authorized by section 1 of the Capper-Volstead Act, 7 U.S.C. 291; or

(2) An organization operated on a cooperative basis by and for independent retailers which wholesales goods or furnishes services primarily to its member-retailers.

(m) The term *fiscal year* means the business opportunity seller's fiscal year.

(n) The term *material, material fact*, and *material change* shall include any fact, circumstance, or set of conditions that has a substantial likelihood of influencing a reasonable business opportunity purchaser in the making of a significant decision relating to a named business opportunity business or that has any significant financial impact on a business opportunity purchaser or prospective business opportunity purchaser.

(o) The term *personal meeting* means a face-to-face meeting between a business opportunity seller or broker (or any agent, representative, or employee thereof) and a prospective business opportunity purchaser which is held for the purposes of discussing the sale or possible sale of a business opportunity.

#### § 437.3 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

NOTE 1: The Commission expresses no opinion as to the legality of any practice mentioned in this part. A provision for disclosure should not be construed as condonation or approval with respect to the matter required to be disclosed, nor as an indication of the Commission's intention not to enforce any applicable statute.

NOTE 2: By taking action in this area, the Federal Trade Commission does not intend to annul, alter, affect, or exempt any person subject to the provisions of this part from complying with the laws or regulations of any State, municipality, or other local government with respect to business opportunity practices, except to the extent that those laws or regulations are inconsistent with any provision of this part, and then only to the extent of the inconsistency. For the purposes of this part, a law or regulation of any State, municipality, or other local government is not inconsistent with this part if the protection such law or regulation affords any prospective business opportunity purchaser is equal to or greater than that provided by this part. Examples of provisions that provide protection equal to or greater than that provided by this part include laws or regulations which require more complete record keeping by the business opportunity

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seller or the disclosure of more complete information to the business opportunity purchaser.

NOTE 3: [As per § 437.1(a)(24) of this part]:

### DISCLOSURE STATEMENT

Pursuant to 16 CFR 437.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Business Opportunities, the following information is set forth on [name of business opportunity seller] for your examination:

1. Identifying information as to the business opportunity seller;
2. Business experience of the business opportunity seller's directors and executive officers.
3. Business experience of the business opportunity seller.
4. Litigation history.
5. Bankruptcy history.
6. Description of business opportunity.
7. Initial funds required to be paid by a business opportunity purchaser.
8. Recurring funds required to be paid by a business opportunity purchaser.
9. Affiliated persons the business opportunity purchaser is required or advised to do business with by the business opportunity seller.
10. Obligations to purchase.
11. Revenues received by the business opportunity seller in consideration of purchases by a business opportunity purchaser.
12. Financing arrangements.
13. Restriction on sales.
14. Person participation required of the business opportunity purchaser in the operation of the business opportunity.
15. Termination, cancellation, and renewal of the business opportunity.
16. Statistical information concerning the number of business opportunity purchasers (and company-owned outlets).
17. Site selection.
18. Training programs.
19. Public figure involvement in the business opportunity.
20. Financial information concerning the business opportunity seller.

## PART 444—CREDIT PRACTICES

Sec.

444.1 Definitions.

444.2 Unfair credit practices.

444.3 Unfair or deceptive cosigner practices.

444.4 Late charges.

444.5 State exemptions.

AUTHORITY: Sec. 18(a), 88 Stat. 2193, as amended 93 Stat. 95 (15 U.S.C. 57a); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552).

SOURCE: 49 FR 7789, Mar. 1, 1984, unless otherwise noted.

### § 444.1 Definitions.

(a) *Lender*. A person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission.

(b) *Retail installment seller*. A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission.

(c) *Person*. An individual, corporation, or other business organization.

(d) *Consumer*. A natural person who seeks or acquires goods, services, or money for personal, family, or household use.

(e) *Obligation*. An agreement between a consumer and a lender or retail installment seller.

(f) *Creditor*. A lender or a retail installment seller.

(g) *Debt*. Money that is due or alleged to be due from one to another.

(h) *Earnings*. Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(i) *Household goods*. Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term *household goods*:

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(j) *Antique*. Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(k) *Cosigner*. A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting